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Attorney for Plaintiff  
*Siemens Financial Services, Inc.*

SIEMENS FINANCIAL SERVICES, INC.,

Plaintiff

*-against-*

JAMES C. JUSTICE, II,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY

DOCKET NO.: MON-L- -18

**VERIFIED COMPLAINT**

Plaintiff, Siemens Financial Services, Inc. ("SFS"), by way of its verified complaint against defendant, James C. Justice, II ("Justice"), says:

**FACTS COMMON TO ALL COUNTS**

**The Parties**

1. SFS is a Delaware corporation that maintains a principal place of business at 170 Wood Avenue South, Iselin, New Jersey 08830.
2. SFS is duly qualified and licensed to transact business in the State of New Jersey and is engaged in the business of financing and leasing various types of equipment.
3. Upon information and belief, Justice is an individual who resides at 208 Dwyer Lane, Lewisburg, West Virginia 24901.

**Jurisdiction and Venue**

4. Pursuant to the Guarantee (as defined herein), Justice consented and submitted to venue in, and the jurisdiction of, this Court.

**The Indebtedness Due to SFS and Justice's Guarantee**

5. On April 17, 2015, Southern Coal Corporation ("Southern Coal") executed and delivered to SFS a Promissory Note in the original, principal amount of \$7,563,601.89. A true copy of the Promissory Note is attached as **Exhibit A** and incorporated by reference herein.

6. In accordance with the Promissory Note, Southern Coal promised to make the monthly payments set forth therein and to repay the aggregate unpaid principal amount thereof plus interest, fees, costs and expenses incurred by SFS in enforcing the Promissory Note including, without limitation, attorneys' fees and legal expenses.

7. On April 17, 2015, Justice executed and delivered to SFS a Guarantee pursuant to which he unconditionally guaranteed, in writing, the payment and performance of all obligations of Southern Coal under, among other loan documents, the Promissory Note, including all costs of enforcement and attorneys' fees ("Guarantee"). A true copy of the Guarantee is attached as **Exhibit B** and incorporated by reference herein.

8. On June 29, 2017, Southern Coal and Justice executed and delivered to SFS a Note Modification Agreement (with Consent of Guarantor) whereby Justice, as guarantor, consented to all terms and conditions of the Note Modification Agreement, reaffirmed and acknowledged the Guarantee as valid, and released all claims against SFS. A true copy of the Note Modification Agreement (with Consent of Guarantor) is attached as **Exhibit C** and incorporated by reference herein.

**The Defaults Under the Note**

9. Southern Coal failed to make certain payments to SFS due under the Promissory Note, as modified by the Note Modification Agreement (with Consent of Guarantor) (hereinafter, the “Note”).

10. Southern Coal’s default under the Note constitutes a material breach thereof, has not been cured, and is continuing as of the date of this verified complaint.

**FIRST COUNT**  
**(Breach of Guarantee)**

11. Paragraphs 1 through 10 are realleged.

12. In reliance upon and in consideration of the Guarantee, SFS made the loan to Southern Coal evidenced by the Note.

13. Upon Southern Coal’s default under the Note, the Guarantee allows SFS to proceed against Justice for the full amount due under the Note, including all costs of enforcement and attorneys’ fees.

14. Under the Guarantee, SFS need not proceed first against Southern Coal for the amounts due and owing under the Note.

15. By letter dated December 26, 2017, SFS notified Justice of Southern Coal’s default under the Note and, pursuant to the terms of the Guarantee, demanded the immediate payment of all amounts due and owing thereunder (“Demand Letter”). A true copy of the Demand Letter is attached as **Exhibit D** and incorporated by reference herein.

16. Despite demand for payment, Justice has failed and refused to pay the amounts that are due and owing under the Note and Guarantee.

17. This verified complaint, in addition to previous demands including the Demand Letter, shall constitute demand upon Justice to pay the indebtedness due and owing to SFS under the terms of the Note and the Guarantee.

18. As a proximate result of Justice's breach of the Guarantee, SFS has been damaged in the principal amount of \$3,624,225.89 plus (i) interest calculated through December 16, 2017 in the amount of \$132,685.30, (ii) continuing interest pursuant to the terms and conditions of the Note until payment is received, (iii) attorneys' fees and costs incurred and to be incurred in connection with SFS' enforcement of its remedies under the Note and Guarantee, and (iv) all other amounts due under the Note and Guarantee.

WHEREFORE, SFS demands judgment against Justice in the principal amount of \$3,624,225.89 plus (i) interest calculated through December 16, 2017 in the amount of \$132,685.30, (ii) continuing interest pursuant to the terms and conditions of the Note until payment is received, (iii) attorneys' fees and costs incurred and to be incurred in connection with SFS' enforcement of its remedies under the Note and Guarantee, (iv) all other amounts due under the Note and Guarantee, and (v) for such other and further relief as the Court deems just and proper.

Dated: April 11, 2018

  
\_\_\_\_\_  
John R. Altieri

**DESIGNATION OF TRIAL COUNSEL**

John R. Altieri, Esq., is hereby designated as trial counsel for the plaintiff in this matter.

**CERTIFICATIONS**

Pursuant to R. 4:5-1, I hereby certify that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding. I further certify that no such action or proceeding is contemplated. Counsel is aware of no other party who should be joined in this action.

Pursuant to R. 1:38-7(b), I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the in the future.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 11, 2018

  
\_\_\_\_\_  
John R. Altieri



**Exhibit A**

# SIEMENS

## PROMISSORY NOTE

\$7,563,601.89

April 17, 2015

**FOR VALUE RECEIVED**, Southern Coal Corporation, at its offices at 302 S. Jefferson Street, Roanoke, Virginia 24011 (the "**Borrower**"), hereby promises to pay to the order of Siemens Financial Services, Inc. (the "**Siemens**"), at its offices at 170 Wood Avenue South, Iselin, New Jersey, or such other place as Siemens shall designate in writing from time to time, the principal sum of Seven Million Five Hundred Thousand Dollars (the "**Loan**"), together with interest thereon as hereinafter provided.

1. **INTEREST RATE.** Interest shall be charged on the outstanding principal balance from the date advanced until the full amount of principal due hereunder has been paid at a rate equal to the LIBOR Market Index Rate plus four point five percent (4.5%) per annum, as that rate may change from day to day in accordance with changes in the Libor Market Index Rate. Interest shall be calculated daily on the basis of the actual number of days elapsed over a 360 day year. "LIBOR Market Index Rate" means, for any day, the rate for 1-month U.S. dollar deposits as reported on Telerate page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately preceding London business day (or if not so reported, then as determined by Siemens from another recognized source or interbank quotation).

2. **PAYMENT OF PRINCIPAL AND INTEREST.**

**Term of Loan**

Principal and interest shall be due and payable on the dates (each, a "**Payment Date**") set forth in the Repayment Schedule I attached hereto and made a part hereof (the "**Repayment Schedule**") in consecutive monthly installments in an amount equal to the sum of (i) all then accrued and unpaid interest, plus (ii) a principal payment in the amount set forth in the Repayment Schedule. The entire unpaid principal amount hereof, together with accrued and unpaid interest thereon and all other amounts payable hereunder shall be due and payable on April 17, 2019 (the "**Maturity Date**").

3. **APPLICATION OF PAYMENTS.** Except as otherwise specified herein, each payment or prepayment, if any, made under this Note shall be applied to pay late charges, accrued and unpaid interest, principal, escrows (if any), and any other fees, costs and expenses which Borrower is obligated to pay under this Note, in such order as Siemens may elect from time to time in its sole discretion.

4. **TENDER OF PAYMENT.** All payments on this Note shall be made in immediately available lawful money of the United States by direct charge to the demand deposit account designated in writing by Borrower. All sums payable to Siemens which are due on a day on which Siemens is not open for business shall be paid on the next succeeding business day and such extended time shall be included in the computation of interest.

5. **LATE CHARGE.** In the event that any installment of principal or interest required to be made by Borrower under this Note shall not be received by Siemens within five (5) days after its due date, Borrower shall pay to Siemens, on demand, a late charge of 1.5% per month (limited by the maximum rate permitted by law) of such delinquent payment. The foregoing right is in



addition to, and not in limitation of, any other rights which Siemens may have upon Borrower's failure to make timely payment of any amount due hereunder.

6. **(RESERVED.)**

7. **SECURITY FOR THE NOTE.** This Note is executed and delivered in accordance with a commercial transaction described herein. As security for the payment of the monies owing under this Note, Borrower has delivered or has caused to be delivered to Siemens the following (each a "Loan Document" and collectively with this Note, and any other guaranty, document, certificate or instrument executed by Borrower or any other obligated party in connection with the Loan, together with all amendments, modifications, renewals or extensions thereof, the "Loan Documents"): (a) a Security Agreement dated April 17, 2015 between Siemens and the Borrower (the "Security Agreement"), and (b) a personal guarantee dated April 17, 2015 from James C. Justice, II (the "Guarantee").

8. **DEFAULT RATE.** From and after the Maturity Date (or Extended Maturity Date in the event that the Loan has been extended pursuant to the terms herein), or from and after the occurrence of an Event of Default hereunder, irrespective of any declaration of maturity, all amounts remaining unpaid or thereafter accruing hereunder, shall, at Siemens's option, bear interest at a default rate of five percent (5%) per annum above the interest rate then in effect as set forth herein (the "Default Rate"), or the highest permissible rate under applicable usury law, whichever is less. Such default rate of interest shall be payable upon demand, but in no event later than when scheduled interest payments are due, and shall also be charged on the amounts owed by Borrower to Siemens pursuant to any judgments entered in favor of Siemens with respect to this Note.

9. **REPRESENTATIONS AND WARRANTIES.** The Borrower represents and warrants, as follows:

9.1. **Organization, Powers.** It (i) is a corporation, general partnership, limited partnership, or limited liability company (as indicated below), duly organized, validly existing and in good standing under the laws of the state of its organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization; (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under each Loan Document to which it is a party.

9.2. **Execution of Loan Documents.** Each of the Loan Documents to which it is a party has been duly executed and delivered by it. Execution, delivery and performance of each of the Loan Documents to which it is a party will not: (i) violate any of its organizational documents, provision of law, order of any court, agency or other instrumentality of government, or any provision of any indenture, agreement or other instrument to which it is a party or by which it or any of its properties is bound; (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature, other than the liens created by the Loan Documents; and (iii) require any authorization, consent, approval, license, exemption of, or filing or registration with, any court or governmental authority.

9.3. **Obligations of Borrower.** Each of the Loan Documents to which it is a party is the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles relating to or affecting the enforcement of creditors' rights generally. It is obtaining the Loan for commercial purposes.

9.4. **Litigation.** There is no action, suit or proceeding at law or in equity or by or before any governmental authority, agency or other instrumentality now pending or, to the knowledge of it, threatened against or affecting it or any of its properties or rights which, if adversely determined, would materially impair or affect: (i) the value of any collateral securing this Note; (ii) its right to carry on its business substantially as now conducted (and as now contemplated); (iii) its financial condition; or (iv) its capacity to consummate and perform its obligations under the Loan Documents to which it is a party.

9.5. **No Defaults.** It is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained herein or in any material agreement or instrument to which it is a party or by which it or any of its properties is bound.

9.6. **No Untrue Statements.** No Loan Document or other document, certificate or statement furnished to Siemens by or on behalf of Borrower contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading. It acknowledges that all such statements, representations and warranties shall be deemed to have been relied upon by Siemens as an inducement to make the Loan to Borrower.

## 10. **COVENANTS.**

10.1. **Financial Statements.** Borrower shall furnish to Siemens the following financial information, in each instance prepared in accordance with generally accepted accounting principles consistently applied:

(a) Not later than one hundred twenty (120) days after the end of each fiscal year, annual financial statements of Borrower including, without limitation, statements of financial condition, income and cash flows, a reconciliation of net worth, a listing of all contingent liabilities, notes to financial statements and any other information reasonably requested by Siemens, audited by a certified public accountant acceptable to Siemens.

(b) Not later than forty-five (45) days after the end of each interim fiscal half year, management-prepared financial statements of Borrower including, without limitation, statements of financial condition, income and cash flows, a reconciliation of net worth, a listing of all contingent liabilities, and any other information reasonably requested by Siemens.

(c) Such other information respecting the operations of Borrower as Siemens may from time to time reasonably request, including, without limitation, bank statements and brokerage reports.

(d) Not later than thirty (30) days after its filing with the Internal Revenue Service, cause to be provided the tax return of Guarantor for such calendar year.

(e) Not later than one hundred twenty (120) days after the end of each calendar year, the personal financial statement of the Guarantor for such calendar year, all in reasonable detail and satisfactory in scope to Siemens, and an accompanying attestation from Guarantor as to the completeness and accuracy of the statement.

10.2. **Compliance Certificate.** Borrower shall furnish to Siemens, with each set of financial statements described herein, a compliance certificate signed by an officer of the Borrower authorized pursuant to the Borrower's organizational document to do so, certifying that: (i) all representations and warranties of Borrower set forth in this Note or any other Loan Document remain true and correct as of the date of such compliance certificate; (ii) none of the

covenants of Borrower contained in this Note or any other Loan Document has been breached; and (iii) to its knowledge, no event has occurred which constitutes an Event of Default (or which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) under this Note or any other Loan Document. In addition, Borrower shall promptly notify Siemens of the occurrence of any default, Event of Default, adverse litigation or material adverse change in its financial condition.

### 10.3. Indemnification.

10.3.1. Borrower hereby indemnifies and agrees to defend and hold harmless Siemens, its officers, employees and agents, from and against any and all losses, damages, or liabilities and from any suits, claims or demands, including reasonable attorneys' fees incurred in investigating or defending such claim, suffered by any of them and caused by, arising out of, or in any way connected with the Loan Documents or the transactions contemplated therein (unless determined by a final judgment of a court of competent jurisdiction to have been caused solely by the gross negligence or willful misconduct of any of the indemnified parties).

10.3.2. In case any action shall be brought against Siemens, its officers, employees or agents, in respect to which indemnity may be sought against Borrower, Siemens or such other party shall promptly notify Borrower and Borrower shall assume the defense thereof, including the employment of counsel selected by Borrower and satisfactory to Siemens, the payment of all costs and expenses and the right to negotiate and consent to settlement. Siemens shall have the right, at its sole option, to employ separate counsel in any such action and to participate in the defense thereof, all at Borrower's sole cost and expense. Borrower shall not be liable for any settlement of any such action effected without its consent (unless Borrower fails to defend such claim), but if settled with Borrower's consent, or if there be a final judgment for the claimant in any such action, Borrower agrees to indemnify and hold harmless Siemens from and against any loss or liability by reason of such settlement or judgment.

10.3.3. The provisions of this Section 10.3 shall survive the repayment or other satisfaction of the Liabilities.

11. EVENTS OF DEFAULT. Any one or more of the following shall constitute an event of default hereunder (an "Event of Default"):

- (i) failure by Borrower to pay any amounts under the Promissory Note when due; or
- (ii) failure by Borrower to comply with any other provisions or perform any of its other obligations arising under the Loan Documents and such remains unremedied by Borrower for a period of twenty (20) days; or
- (iii) any representations or warranties made or given by Borrower or the Guarantor (each, an "Obligor") in connection with the Loan Documents were false or misleading in a material respect when made; or
- (iv) commencement of any insolvency, bankruptcy or similar proceedings by or against an Obligor, including any assignment by an Obligor for the benefit of creditors (and in the case of any such involuntary proceedings, such is not dismissed within thirty (30) days of institution), or the inability of an Obligor to generally pay its debts as they become due, or the appointment of a receiver, trustee or similar official for an Obligor or any of its respective property; or
- (v) (a) as determined in Siemens' reasonable judgment, any material adverse change from the date of the Promissory Note in (i) an Obligor's business operations or financial condition, or (ii) the prospect of full performance of an Obligor's obligations under the Loan Documents,

including but not limited to the liquidation or dissolution of an Obligor or the commencement of any acts relative thereto; or (b) without the prior written consent of Siemens, any sale or other disposition of all or substantially all of the assets of an Obligor, or any merger or consolidation of an Obligor unless such Obligor is the surviving entity and such Obligor's tangible net worth, after giving effect to such transaction, equals or exceeds that which existed prior thereto, or the cessation of business by an Obligor; or

(vi) a default by an Obligor under any of the Loan Documents, the Guarantee or other agreement or note with Siemens or any assignee of a Loan Agreement, or under any agreement with any other party that in Siemens's sole opinion is a material agreement; or

(vii) the death of an Obligor, or the inability of an Obligor to perform any of the respective obligations contained in the Loan Documents; or

(viii) the attempt by an Obligor to revoke or terminate the Guarantee.

12. **REMEDIES.** If an Event of Default exists, Siemens may exercise any right, power or remedy permitted by law or as set forth herein or in the Loan Documents, including, without limitation, the right to declare the entire unpaid principal amount hereof and all interest accrued hereon, and all other sums secured by the Security Agreement or any other Loan Document, to be, and such principal, interest and other sums shall thereupon become, immediately due and payable. Without the need for any action of any kind by Siemens, the entire unpaid principal amount hereof and all interest accrued hereon, and all other sums secured by the Security Agreement or any other Loan Document and such principal, interest and other sums shall thereupon become immediately due and payable in full without notice or demand upon the occurrence of any of the Event of Default identified in Section 11(iv) hereof.

### 13. **MISCELLANEOUS.**

13.1. **Disclosure of Financial Information.** Siemens shall treat all financial information furnished to it by the Borrower or Guarantor as strictly confidential, and shall not furnish the same to any third person, and shall not furnish the same to any person within Siemens except those who Siemens considers appropriate to know the information for the purposes of carrying out the intent of the Loan Documents. Notwithstanding the prior sentence, Siemens is hereby authorized (a) to disclose any financial or other information about Borrower to any regulatory body, agency, or court having jurisdiction over Siemens, provided, however, that Siemens shall give prior written notice to such Borrower in order to afford it an opportunity to take action to either prevent such disclosure or seek a protective order with respect to such information; or (b) to disclose any financial or other information about Borrower to (i) any present, future or prospective participant or successor in interest in any loan or other financial accommodation made by Siemens to Borrower, or (ii) any of Siemens' advisors, attorneys, accountants, or representatives, provided in either situation, however, that Siemens shall inform each such recipient of the confidentiality restrictions of this Section 13.1 and require each such recipient to protect the confidentiality of all such information in accordance with this Section 13.1. The information provided may include, without limitation, amounts, terms, balances, payment history, return item history and any financial or other information about Borrower.

13.2. **Integration.** This Note and the other Loan Documents constitute the sole agreement of the parties with respect to the transaction contemplated hereby and supersede all oral negotiations and prior writings with respect thereto. For the avoidance of doubt, the Note and Loan Documents are not intended to affect any rights and/or obligations under any leases by and between Siemens, Borrower, Kentucky Fuel Corp. and/or A&G Coal Corp. and/or any guarantees executed in connection therewith.



13.3. **Attorneys' Fees and Expenses.** If Siemens retains the services of counsel by reason of a claim of a default or an Event of Default hereunder or under any of the other Loan Documents, or on account of any matter involving this Note, or for examination of matters subject to Siemens's approval under the Loan Documents, all costs of suit and all reasonable attorneys' fees and such other reasonable expenses so incurred by Siemens shall be paid by Borrower, on demand, and shall be deemed part of the obligations evidenced hereby. Notwithstanding anything herein to the contrary, any nonrecurring costs and expenses incurred by the parties hereto to initially negotiate and enter into the Note and the Loan Documents shall be the responsibility of the party which incurs such costs and expenses.

13.4. **No Implied Waiver.** Siemens shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Siemens, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy in a subsequent event. After any acceleration of, or the entry of any judgment on, this Note, the acceptance by Siemens of any payments by or on behalf of Borrower on account of the indebtedness evidenced by this Note shall not cure or be deemed to cure any Event of Default or reinstate or be deemed to reinstate the terms of this Note absent an express written agreement duly executed by Siemens and Borrower.

13.5. **Waiver.** Borrower, jointly and severally, waives demand, notice, presentment, protest, demand for payment, notice of dishonor, notice of protest and diligence of collection of this Note. Borrower consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by Siemens with respect to the payment or other provisions of this Note, and to the release of any collateral, with or without substitution. Borrower agrees that makers, endorsers, guarantors and sureties may be added or released without notice and without affecting Borrower's liability hereunder. The liability of Borrower shall not be affected by the failure of Siemens to perfect or otherwise obtain or maintain the priority or validity of any security interest in any collateral. The liability of Borrower shall be absolute and unconditional and without regard to the liability of any other party hereto.

13.6. **No Usurious Amounts.** Anything herein contained to the contrary notwithstanding, Borrower does not agree and shall not be obligated to pay interest hereunder at a rate which is in excess of the maximum rate permitted by law. If by the terms of this Note, Borrower is at any time required to pay interest at a rate in excess of such maximum rate, the rate of interest under this Note shall be deemed to be immediately reduced to such maximum legal rate and the portion of all prior interest payments in excess of such maximum legal rate shall be applied to and shall be deemed to have been payments in reduction of the outstanding principal balance. Borrower agrees that in determining whether or not any interest payable under this Note exceeds the highest rate permitted by law, any non-principal payment, including without limitation, late charges, shall be deemed to the extent permitted by law to be an expense, fee or premium rather than interest.

13.7. **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Note shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

13.8. **Binding Effect.** The covenants, conditions, waivers, releases and agreements contained in this Note shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns; provided, however, that this Note cannot be assigned by Borrower without the prior written consent of Siemens, and

any such assignment or attempted assignment by Borrower shall be void and of no effect with respect to Siemens.

13.9. **Modifications.** This Note may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any such waiver, change, modification or discharge is sought.

13.10. **Sales or Participations.** Siemens may from time to time sell or assign, in whole or in part, or grant participations in, the Loan, this Note and/or the obligations evidenced thereby. The holder of any such sale, assignment or participation, if the applicable agreement between Siemens and such holder so provides, shall be: (a) entitled to all of the rights, obligations and benefits of Siemens; and (b) deemed to hold and may exercise the rights of setoff or banker's lien with respect to any and all obligations of such holder to Borrower, in each case as fully as though Borrower were directly indebted to such holder. Siemens will make best efforts to provide ten (10) days advance notice to Borrower of such sale, assignment or participation; however, the failure to give such notice shall not affect any of Siemens's or such holder's rights hereunder.

13.11. **Jurisdiction.** Borrower irrevocably appoints each and every owner, partner and/or officer of Borrower as its attorneys upon whom may be served, by regular or certified mail at the address set forth below, any notice, process or pleading in any action or proceeding against it arising out of or in connection with this Note or any other Loan Document; and Borrower hereby consents that any action or proceeding against it be commenced and maintained in any court within the State/Commonwealth of New Jersey by service of process on any such owner, partner and/or officer; and Borrower agrees that the courts of such State shall have jurisdiction with respect to the subject matter hereof and the person of Borrower and all collateral securing the obligations of Borrower. Borrower agrees not to assert any defense to any action or proceeding initiated by Siemens based upon improper venue or inconvenient forum.

13.12. **Notices.** All notices and communications under this Note shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in the Mortgage. Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (iii) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

13.13. **Governing Law.** This Note shall be governed by and construed in accordance with the substantive laws of the State of New Jersey without reference to conflict of laws principles.

13.14. **Joint and Several Liability.** If Borrower consists of more than one person or entity, the word "Borrower" shall mean each of them and their liability shall be joint and several.

13.15. **Continuing Enforcement.** If, after receipt of any payment of all or any part of this Note, Siemens is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Note and the other Loan Documents shall continue in full force and effect or be reinstated, as the case may be, and Borrower shall be liable for, and shall indemnify, defend and hold harmless Siemens with respect to, the full amount so surrendered. The provisions of this Section shall survive the cancellation or termination of this Note and shall

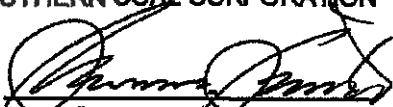
remain effective notwithstanding the payment of the obligations evidenced hereby, the release of any security interest, lien or encumbrance securing this Note or any other action which Siemens may have taken in reliance upon its receipt of such payment. Any cancellation, release or other such action shall be deemed to have been conditioned upon any payment of the obligations evidenced hereby having become final and irrevocable.

**13.16. Waiver of Jury Trial. BORROWER AND LENDER AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY LENDER OR BORROWER, ON OR WITH RESPECT TO THIS NOTE OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. LENDER AND BORROWER EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY, AND WITH THE ADVICE OF THEIR RESPECTIVE COUNSEL, WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, BORROWER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS NOTE AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS NOTE.**

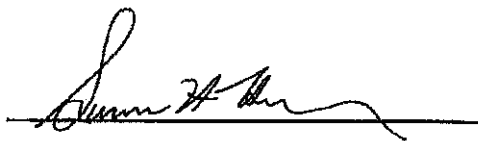
**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, Borrower, intending to be legally bound, has duly executed and delivered this Note under seal as of the day and year first above written.

**BORROWER:**  
**SOUTHERN COAL CORPORATION**

By:   
Name: James C. Justice III  
Title: Executive Vice President

**WITNESS:**



\_\_\_\_\_  
Name: \_\_\_\_\_ (SEAL)  
Name: (Individual)

**WITNESS/ATTEST:**  
\_\_\_\_\_  
(SEAL)  
(Corporation, Partnership or LLC)

\_\_\_\_\_  
By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Corporate Seal]



**SIEMENS****REPAYMENT SCHEDULE I  
to PROMISSORY NOTE DATED April 17, 2015**Original principal amount: \$7,563,601.89Interest Rate: as defined in section 1 of the Promissory Note dated April 17, 2015

Payment Date	Principal Repayment	Ending Balance	Payment Date	Principal Repayment	Ending Balance
4/17/2015		\$7,563,601.89	5/17/2017	\$157,575.04	\$3,624,225.89
5/17/2015	\$157,575.04	\$7,406,026.85	6/17/2017	\$157,575.04	\$3,466,650.85
6/17/2015	\$157,575.04	\$7,248,451.81	7/17/2017	\$157,575.04	\$3,309,075.81
7/17/2015	\$157,575.04	\$7,090,876.77	8/17/2017	\$157,575.04	\$3,151,500.77
8/17/2015	\$157,575.04	\$6,933,301.73	9/17/2017	\$157,575.04	\$2,993,925.73
9/17/2015	\$157,575.04	\$6,775,726.69	10/17/2017	\$157,575.04	\$2,836,350.69
10/17/2015	\$157,575.04	\$6,618,151.65	11/17/2017	\$157,575.04	\$2,678,775.65
11/17/2015	\$157,575.04	\$6,460,576.61	12/17/2017	\$157,575.04	\$2,521,200.61
12/17/2015	\$157,575.04	\$6,303,001.57	1/17/2018	\$157,575.04	\$2,363,625.57
1/17/2016	\$157,575.04	\$6,145,426.53	2/17/2018	\$157,575.04	\$2,206,050.53
2/17/2016	\$157,575.04	\$5,987,851.49	3/17/2018	\$157,575.04	\$2,048,475.49
3/17/2016	\$157,575.04	\$5,830,276.45	4/17/2018	\$157,575.04	\$1,890,900.45
4/17/2016	\$157,575.04	\$5,672,701.41	5/17/2018	\$157,575.04	\$1,733,325.41
5/17/2016	\$157,575.04	\$5,515,126.37	6/17/2018	\$157,575.04	\$1,575,750.37
6/17/2016	\$157,575.04	\$5,357,551.33	7/17/2018	\$157,575.04	\$1,418,175.33
7/17/2016	\$157,575.04	\$5,199,976.29	8/17/2018	\$157,575.04	\$1,260,600.29
8/17/2016	\$157,575.04	\$5,042,401.25	9/17/2018	\$157,575.04	\$1,103,025.25
9/17/2016	\$157,575.04	\$4,884,826.21	10/17/2018	\$157,575.04	\$945,450.21
10/17/2016	\$157,575.04	\$4,727,251.17	11/17/2018	\$157,575.04	\$787,875.17
11/17/2016	\$157,575.04	\$4,569,676.13	12/17/2018	\$157,575.04	\$630,300.13
12/17/2016	\$157,575.04	\$4,412,101.09	1/17/2019	\$157,575.04	\$472,725.09
1/17/2017	\$157,575.04	\$4,254,526.05	2/17/2019	\$157,575.04	\$315,150.05
2/17/2017	\$157,575.04	\$4,096,951.01	3/17/2019	\$157,575.04	\$157,575.01
3/17/2017	\$157,575.04	\$3,939,375.97	4/17/2019	\$157,575.01	\$0.00
4/17/2017	\$157,575.04	\$3,781,800.93			

Initial: 

Borrower's Initials

**Exhibit B**

### GUARANTEE

GUARANTEE, dated as of April 17, 2015, made by James C. Justice, II, a individual residing at 208 Dwyer Lane, Lewisburg, West Virginia 24901 (the "Guarantor"), in favor of Siemens Financial Services, Inc., a Delaware Corporation having an office at 170 Wood Avenue South, Iselin, New Jersey 08830 ("Siemens").

### WITNESSETH:

WHEREAS, Siemens is willing, subject to the conclusion of satisfactory documentation and the satisfaction of other conditions, to extend credit to Southern Coal Corporation (the "Company"), a Delaware corporation, which is a party to a \$7,563,601.89 Promissory Note (the Company is the maker of said Promissory Note and the obligor thereunder) payable to Siemens dated as of April 17, 2015 (the "Note"), which is secured by a Security Agreement dated as of April 17, 2015, by and between the Company and Siemens (the "Security Agreement"), (collectively, as the same may be amended from time to time, the Note and Security Agreement are hereinafter referred to as (the "Agreement"); it is a condition precedent to the willingness of Siemens to extend credit under the Agreement to the Company that the Guarantor shall have executed this Guarantee to Siemens.

NOW, THEREFORE, the Guarantor hereby agrees with Siemens as follows:

1. Defined Terms. Terms not otherwise defined herein shall have the same meaning given to such terms in the Agreement.

2. Guarantee. The Guarantor hereby unconditionally and irrevocably guarantees to Siemens the prompt and complete payment and performance by the Company when due (whether at the stated maturity, by acceleration or otherwise) of all indebtedness, liabilities and obligations of every kind and nature of the Company to Siemens arising out of the Agreement (collectively, the "Obligations") in the currency in which the Obligations are denominated. The Guarantor further agrees to pay any and all expenses, including, without limitation, all reasonable fees and disbursements of counsel (including, without limitation, allocated costs of staff counsel) which may be paid or incurred by Siemens in enforcing and preserving any of their respective rights under this Guarantee and such as may be incurred by Siemens in connection with the preparation, negotiation, execution and delivery hereof. This Guarantee shall remain in full force and effect until the Obligations are paid in full and performed and the Agreement is terminated, notwithstanding that from time to time prior thereto the Company may be free from any Obligations.

The Guarantor agrees that whenever, at any time, or from time to time, it shall make any payment to Siemens on account of its liability hereunder, it will notify Siemens in writing that such payment is made under this Guarantee for such purpose. No payment or payments made by the Company or any other person or received or collected by Siemens from the Company or any other person by virtue of any action or proceeding or any set-off or appropriation or application, at any time or from time to time, in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of the Guarantor hereunder which shall, notwithstanding any such payment or payments, remain liable for the amount of the Obligations as aforesaid until the Obligations are paid in full and the commitment of Siemens to extend credit from time to time to the Company is terminated.

3. Subrogation. The Guarantor shall have no right of subrogation until the Obligations are fully and finally paid.

4. Amendments, etc., with respect to the Obligations. The Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against the

Guarantor, and without notice to or further assent by the Guarantor, any demand for payment of any of the Obligations made by Siemens may be rescinded by Siemens, and any of the Obligations continued, and the Obligations, or the liability of any other party upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Siemens, and any agreement or instrument relating to the extension of credit by Siemens to the Company, any promissory note in respect thereof, and any other document in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as Siemens may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by Siemens for the payment of the Obligations may be sold, exchanged, waived, surrendered or released. Siemens shall not have any obligation to protect, secure, perfect or insure any lien at any time held by it as security for the Obligations or for this Guarantee or any property subject thereto.

5. Guarantee Absolute and Unconditional. The Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by Siemens upon this Guarantee or acceptance of this Guarantee; the Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee; and all dealings between the Company or the Guarantor, on the one hand, and Siemens, on the other, shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. The Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Company or the Guarantor with respect to the Obligations. This Guarantee shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (a) the validity or enforceability of the Agreement or any other instrument or document relating to the extension of credit by Siemens, any promissory note in respect thereof, any of the Obligations or any collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by Siemens, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Company against Siemens, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Company or the Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Company for the Obligations, or of the Guarantor under this Guarantee, in bankruptcy or in any other instance. When pursuing its rights and remedies hereunder against the Guarantor, Siemens may, but shall be under no obligation to, pursue such rights and remedies as it may have against the Company or any other person or against any collateral security or guarantee for the Obligations or any right of offset with respect thereto, and any failure by Siemens to pursue such other rights or remedies or to collect any payments from the Company or any such other person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Company or any such other person or any such collateral security, guarantee or right of offset, shall not relieve the Guarantor of any liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Siemens against the Guarantor.

6. Reinstatement. This Guarantee shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by Siemens upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Company or any substantial part of their property, or otherwise, all as though such payments had not been made. Siemens shall not be required to litigate or otherwise dispute its obligation to make such repayments if it, in good faith, believes that such obligation exists.

7. Payments. The Guarantor hereby agrees that the Obligations will be paid to Siemens without set-off or counterclaim in U.S. Dollars at the office of Siemens located at its address below.

8. Representations and Warranties. The Guarantor represents and warrants that:

(a) this Guarantee constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally;

(b) the execution, delivery and performance of this Guarantee will not violate any provision of any law or regulation or of any judgment, order, decree, determination or award of any court, arbitrator or governmental authority, bureau or agency or of any mortgage, indenture, loan or security agreement, lease, contract or other agreement, instrument or undertaking to which the Guarantor is a party or which purports to be binding upon it or any of its properties or assets or result in or require the creation or imposition of any lien on any of the properties or revenues of the Guarantor pursuant to the provisions of any of the foregoing;

(c) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, bureau or agency and no consent of any other person (including, without limitation, any creditor of the Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guarantee;

(d) except as disclosed to Siemens in writing prior to the date of this Guarantee, no litigation, investigation or proceeding of or before any arbitrator or governmental authority, bureau or agency is pending or, to the knowledge of the Guarantor, threatened by or against the Guarantor or against any of its properties or revenues (i) with respect to this Guarantee or any of the transactions contemplated hereby or (ii) the probable outcome of which will have a material adverse effect on the business or financial condition of the Guarantor; and

(e) the tax return of Guarantor for the tax year(s) 2013 and the personal financial statement of the Guarantor dated as of December 31, 2014 (copies of which have heretofore been furnished to Siemens) have been prepared in accordance with generally accepted accounting principles ("GAAP") applied throughout the period involved, except as approved by such accountants described in reasonable detail therein, are complete and correct and present fairly the financial condition of the Guarantor as of such date; since such date there has been no event or condition that could reasonably be expected to result in a material adverse change in the financial condition or business operations of the Guarantor.

(f) except as disclosed to Siemens in writing prior to the date of this Guarantee, the assets of Guarantor reflected on the personal financial statement of Guarantor dated as of December 31, 2014 are wholly owned by Guarantor and are not held jointly with any other person or entity.

9. Delivery of Financial Statements and Other Information. The Guarantor hereby covenants and agrees with Siemens for the benefit of Siemens that, from and after the date of this Guarantee until the Obligations are paid in full and any commitment of Siemens to extend credit from time to time to the Company is terminated, the Guarantor shall furnish to Siemens:

(a) Not later than thirty (30) days after its filing with the Internal Revenue Service, the tax return of Guarantor for such calendar year.

(b) Not later than one hundred twenty (120) days after the end of each fiscal year, the personal financial statement of the Guarantor for such calendar year, all in reasonable detail and satisfactory in scope to Siemens, and an accompanying attestation from the Guarantor as



to the completeness and accuracy of the statement.; and

(c) with reasonable promptness, such other financial information as Siemens may reasonably request in writing.

10. Status of Company. The Guarantor represents and warrants as of the date hereof that the Guarantor directly or indirectly owns at least 51% of the voting interests in the Company or that it otherwise directly or indirectly controls or operates the Company. Notwithstanding any sale or transfer of any ownership interest in the Company, the Guarantor will continue to be bound by the terms of this Guarantee.

11. Severability. Any provision of this Guarantee which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12. Section Headings. The paragraph headings used in this Guarantee are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

13. No Waiver; Cumulative Remedies. Siemens shall not by any act (except by a written instrument pursuant to Section 14 hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of Siemens, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by Siemens of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Siemens would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

14. Waivers and Amendments; Successors and Assigns; Governing Law. Except as otherwise set forth herein, none of the terms or provisions of this Guarantee may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Guarantor and Siemens; provided that any provision of this Guarantee may be waived by Siemens in a letter or agreement executed by Siemens or by telex or facsimile transmission from Siemens. This Guarantee shall be binding upon the successors and assigns of the Guarantor and shall inure to the benefit of Siemens, its affiliates and their respective successors and assigns. THIS GUARANTEE IS A GUARANTEE OF PAYMENT AND NOT OF COLLECTION AND SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

15. Submission to Jurisdiction. The Guarantor hereby irrevocably agrees that any legal action, suit or proceeding against it with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Guarantee or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding may be brought in any federal, state or local court (a) sitting in or for the County of Middlesex, New Jersey, and/or (b) in which jurisdiction can be obtained against the Company, as Siemens may elect, and, by execution and delivery of this Guarantee, the Guarantor hereby irrevocably accepts and submits to the non-exclusive jurisdiction of each of the aforesaid courts in personam generally and unconditionally with respect to any such action, suit or proceeding for itself and in respect of its

property. The Guarantor further agrees that final judgment against it in any action, suit or proceeding referred to herein shall be conclusive and may be enforced in any other jurisdiction, within or outside the United States of America, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its indebtedness. The Guarantor further irrevocably consents and agrees to the service of any and all legal process, summons, notices, and documents out of any of the aforesaid courts in any such action, suit or proceeding by personal delivery to its offices set forth with its signature below or by sending copies thereof by United States registered or certified mail, postage prepaid, or by overnight mail or courier, to the Guarantor at its address set forth with its signature below. Such service shall be deemed completed on the third business day after such process is so mailed. Nothing herein contained shall, or shall be construed so as to, limit the right of Siemens to bring actions, suits or proceedings with respect to the obligations and liabilities of the Guarantor under, or any other matter arising out of or in connection with, this Guarantee, or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, in the courts of whatever jurisdiction in which the office of Siemens may be located or assets of the Guarantor may be found or otherwise shall to Siemens seem appropriate, or to affect the right to service of process in any jurisdiction in any other manner permitted by the law.

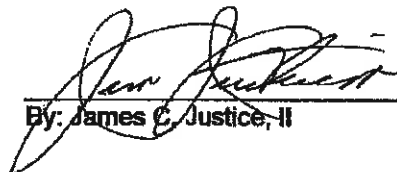
IN ADDITION, THE GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES (i) ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTEE OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND (ii) ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS, SUITS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTEE BROUGHT IN ANY OF THE AFORESAID COURTS, AND HEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

By accepting this Guarantee, Siemens shall irrevocably and unconditionally waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Guarantee.

16. Notices. Notices by Siemens to the Guarantor may be given by United States first class certified mail – return receipt requested – or by overnight mail or courier (in each case by an internationally recognized company), addressed to the Guarantor at its address set forth on the first page of this Guarantee and shall be effective (a) in the case of mail, on the earlier of two (2) days after deposit in the United States postal system, first class certified postage prepaid or on the day delivered as evidenced in the records therefor, or, (b) in the case of overnight mail or courier, when delivered as evidenced in the records therefor. The Guarantor may change its address by written notice to Siemens at its address below or at such other address as may be notified by Siemens to the Guarantor.

17. Guarantor acknowledges that its liability hereunder is joint and several with any other guarantor of the Obligations.

IN WITNESS WHEREOF, the undersigned has caused this Guarantee to be duly executed and delivered as of the date first above written.

  
By: James C. Justice, II

Address for Notices:  
James C. Justice, II  
208 Dwyer Lane  
Lewisburg, West Virginia 24901

ACCEPTED:  
Siemens Financial Services, Inc.  
170 Wood Avenue South  
Iselin, New Jersey 08830

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Printed or Typed)

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Printed or Typed)

Title: \_\_\_\_\_



IN WITNESS WHEREOF, the undersigned has caused this Guarantee to be duly executed and delivered as of the date first above written.

By: James C. Justice, II

Address for Notices:

James C. Justice, II  
208 Dwyer Lane  
Lewisburg, West Virginia 24901

ACCEPTED:

Siemens Financial Services, Inc.  
170 Wood Avenue South  
Iselin, New Jersey 08830

By: 

Name: EDWARD F. RUFFOLO

(Printed or Typed)

Title: VICE PRESIDENT

By: 

Name: Kevin S. Keaton  
Director, Operations

(Printed or Typed)

Title: \_\_\_\_\_

**Exhibit C**

**NOTE MODIFICATION AGREEMENT  
(with Consent of Guarantor)**

THIS NOTE MODIFICATION AGREEMENT (this "Modification Agreement") is entered into as of the Effective Date (as defined below) by and between SOUTHERN COAL CORPORATION, a corporation organized under the laws of Delaware ("Borrower") and SIEMENS FINANCIAL SERVICES, INC., a Delaware corporation ("Siemens") (collectively, the "Parties"), and consented to by James C. Justice, II, an individual with a residence at 208 Dwyer Lane, Lewisburg, WV, as Guarantor under the Guarantee (both as defined below).

**RECITALS**

WHEREAS, on April 17, 2015, the Parties entered into a loan transaction pursuant to which Siemens loaned to Borrower the principal sum of \$7,563,601.89 (the "Loan"). The Loan was evidenced by a Promissory Note dated April 17, 2015 from Borrower payable to Siemens in the principal amount of \$7,563,601.89 (the "Note"), a Security Agreement dated April 17, 2015 between the Parties (the "SI"), and a Guarantee dated April 17, 2015 issued by James C. Justice II (the "Guarantor") in favor of Siemens for all Obligations (as defined therein) of the Borrower arising from the Note and the SI (the "Guarantee") (the Note, SI, and Guarantee, collectively referred to herein as the "Transaction Documents"). Capitalized terms not specifically defined herein shall have the meanings ascribed by the Note to such terms; and

WHEREAS, the Borrower failed to make payments pursuant to the Note, and

WHEREAS, Siemens, pursuant to a letter to the Borrower and the Guarantor dated May 19, 2017, declared that Borrower was in default under the Note for failure to pay \$176,698.59 and demanded from the Borrower the immediate payment of all amounts due under the Note and demanded Guarantor immediately make payment of all amounts due under the Guarantee; and

WHEREAS, Borrower has requested to amend and restate the amortization schedule upon which the regularly-scheduled payments of principal and interest shall be made by Borrower to Siemens under the Note; and

WHEREAS, the Borrower and Siemens have agreed, subject to (i) the execution of this Modification Agreement by the Parties, and (i) the written consent of same by the Guarantor, that Siemens will (1) amend the payment terms of the Note, all as provided in this Modification Agreement, and (2) de-accelerate the Loan pursuant to the conditions noted below;

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows, effective as of the Effective Date:

1. Recitals. The Recitals set forth hereinabove are true and correct, and such Recitals and the Note are incorporated herein by reference. .

2. Modification of Note.

(a) The original REPAYMENT SCHEDULE I to the Note is hereby deleted in its entirety and the Exhibit A entitled "Siemens Schedule," attached to this Modification Agreement is hereby substituted in lieu thereof. Henceforth, wherever "Repayment Schedule" is referenced in the Note, it shall mean the Siemens Schedule attached to this Modification Agreement.

(b) The term "Finance Documents," as defined in the Security Agreement, shall hereinafter include this Modification Agreement.

(c) The term "Loan Documents," as defined in the Note, shall hereinafter include this Modification Agreement.

3. Conditional De-Acceleration of Loan.

(a) In the event this Modification Agreement has been fully executed by the Parties and consented to by the Guarantor and the Borrower pays the past due amounts for April through June 2017, totaling \$270,762.03, and the interest only payments for July through September 2017 in accordance with this Modification Agreement, then Siemens shall, without the necessity of taking any further action, automatically de-accelerate the amounts now due and owing under the Loan.

(b) In the event the de-acceleration of the Loan occurs in accordance with Section 3(a) of this Modification Agreement, the Borrower shall timely pay to Siemens all other amounts, and timely perform all additional obligations, that are or come due under the Loan, including, without limitation, (i) payment of all monthly Loan installment payments, (ii) payment of all taxes (personal property taxes, sales and use taxes or otherwise), (iii) payment of all late charges, and (iv) payment and performance of all other obligations under the Loan.

(c) For the avoidance of doubt, in the event that the Loan is de-accelerated pursuant to Section 3(a) of this Modification Agreement, nothing in this Modification Agreement shall prevent or hinder Siemens from accelerating all amounts due under the Loan upon the occurrence of a Default after the Loan is de-accelerated pursuant to Section 3(a) of this Modification Agreement.

4. Reaffirmation.

(a) Except as expressly set forth herein, nothing in this Modification Agreement modifies any other terms, conditions, and covenants contained in the Transaction Documents, including without limitation, Siemens' right to demand the Late Charge for non-payment under the Note, and to otherwise collect interest, fees, expenses, and reimbursements as set forth in the Transaction Documents.

(b) This Modification Agreement contains the entire agreement between Borrower and Siemens with respect to the modification of the Note.

(c) Borrower hereby reaffirms the Note, as modified hereby, and the other Transaction Documents.

(d) Borrower agrees that except as modified by this Modification Agreement, the Note and all other Transaction Documents remain unaltered and in full force and effect, enforceable against Borrower in accordance with their respective terms.

(e) Borrower confirms that the Note, as modified hereby, constitutes a Note evidencing the Loan and continues to be secured by the SI.

(f) Nothing in this Modification Agreement affects, and no fact occurring prior to the Effective Date has affected, the extent, lien, and priority of the security interests securing the Borrower's payment of the Loan and performance of the obligations under the Transaction Documents and/or the Siemens' rights arising under the Transaction Documents, including Siemens' entitlement to enforce the Transaction Documents as written.

(g) Borrower hereby absolutely, unconditionally and irrevocably releases, remises, and forever discharges the Siemens, and its successors and assigns, and its shareholders, members, managers, affiliates, subsidiaries, divisions, directors, officers, attorneys, employees, agents, and other representatives, of and from any and all demands, actions, causes of action, suits, damages and any and all other claims, counterclaims, defenses, rights of setoff, demands and liabilities whatsoever of every kind and nature, which Borrower may have, hold, or claim to have against each or any of them, for, upon, or by reason of any circumstance, action, cause or thing whatsoever arising prior to the Effective Date.

5. Representations of Borrower. Borrower hereby represents and warrants that the execution and delivery of, and the performance of, this Modification Agreement is within Borrower's power and authority without the joinder or consent of any other party and has been duly authorized by all requisite action and the same is not in contravention of any law or undertaking to which Borrower is a party or by which it is bound.

6. Further Assurances. Borrower, upon request from Siemens, agrees to execute such other and further documents as may be reasonably necessary or appropriate to consummate the transactions contemplated herein.

7. Severability. If any covenant, condition, or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision will not in any way affect any other covenant, condition or provision of this Modification Agreement or the other Transaction Documents.

8. Successors and Assigns. The terms and provisions hereof are binding upon and inure to the benefit of the parties hereto, their heirs, representatives, successors and/or assigns.

9. Counterparts. This Modification Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such executed counterparts shall constitute this Modification Agreement.

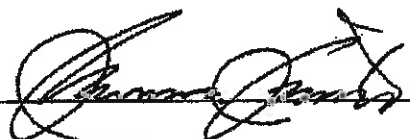
10. Effective Date. This Modification Agreement shall be effective on the date of signature that the final signatory among Borrower, Siemens, and Guarantor (with respect to it consent) has signed the Modification Agreement (the "Effective Date").

*[Signatures are on following pages.]*

IN WITNESS WHEREOF, the parties have executed this Modification Agreement effective as of the Effective Date.


**BORROWER:**

SOUTHERN COAL CORPORATION, a  
Delaware corporation

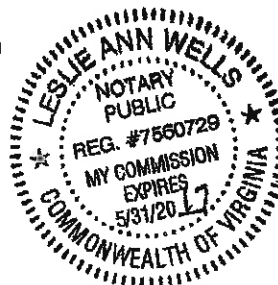
By:   
Authorized Signatory

STATE OF Virginia  
COUNTY OF Boanneke

The foregoing was acknowledged before me this 29<sup>th</sup> day of June, 2017, by James C. Justice, III, as President, of Southern Coal Corporation, a Delaware corporation, on behalf of the corporation. The foregoing individual is personally known to me.

  
Notary Public  
Serial # (if any): 7560729  
My Commission expires: 5-31-2021

(SEAL)



**LENDER:**

**SIEMENS FINANCIAL SERVICES, INC.,**  
a Delaware corporation

By: [Signature]  
Print Name: Edward F. Kubilla  
Title: Vice President

By: [Signature]  
Print Name: Dhairyashree Borda  
Title: Head of Risk - Asset Finance

STATE OF New Jersey  
COUNTY OF Middlesex

The foregoing was acknowledged before me this 6<sup>th</sup> day of July, 2017, by Dhairyashree Borda, as Head of Risk, Asset Finance, and Edward Kubilla, as Vice President, Asset Finance, of SIEMENS FINANCIAL SERVICES, INC., a Delaware corporation, on behalf of the corporation. Each of the foregoing individuals is personally known to me.

Keisha Hall  
Notary Public  
Serial # (if any): 2414145  
My Commission expires: 10-31-21

(SEAL)

KEISHA HALL  
NOTARY PUBLIC OF NEW JERSEY  
Comm. # 2414145  
Commission Expires 10/31/2021



**CONSENT OF GUARANTOR**  
**JAMES C. JUSTICE, II**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, JAMES C. JUSTICE, II ("Guarantor") hereby:

(1) Acknowledges receipt of the Note Modification Agreement (the "Modification Agreement") by and between SOUTHERN COAL CORPORATION, a Delaware corporation ("Borrower") and SIEMENS FINANCIAL SERVICES, INC., a Delaware corporation ("Siemens");

(2) Confirms that Guarantor is the owner of direct or indirect interests, or has a financial interest, in Borrower and will directly benefit from the Modification Agreement;

(3) Consents to the Modification Agreement and the modification of the Note as described therein;

(4) Ratifies and affirms its Guarantee dated April 17, 2015, in favor of Siemens (the "Guarantee");

(5) Agrees that the term "Note," as defined in the Guarantee, shall mean and include the Note as defined in the Modification Agreement, and the term "Agreement" as defined in the Guarantee, shall include the Modification Agreement; and

(6) Confirms that nothing in this Modification Agreement affects, and no fact occurring prior to the Effective Date (as defined in the Agreement) has affected, the Guarantor's obligations arising under the Guarantee, and/or the Siemens' right to enforce the Guarantee and the other Transaction Documents as written.

(7) Guarantor hereby absolutely, unconditionally and irrevocably releases, remises, and forever discharges the Siemens, and its successors and assigns, and its shareholders, members, managers, affiliates, subsidiaries, divisions, directors, officers, attorneys, employees, agents, and other representatives, of and from any and all demands, actions, causes of action, suits, damages and any and all other claims, counterclaims, defenses, rights of setoff, demands and liabilities whatsoever of every kind and nature, which Guarantor may have, hold, or claim to have against each or any of them, for, upon, or by reason of any circumstance, action, cause or thing whatsoever arising prior to the Effective Date.

*[Signature on following page.]*

IN WITNESS WHEREOF, the Guarantor has executed this Consent of Guarantor effective as of the Effective Date.


**GUARANTOR:**

**JAMES C. JUSTICE, II**



STATE OF Virginia  
COUNTY OF Roanoke

The foregoing was acknowledged before me this 29<sup>th</sup> day of June, 2017, by James C. Justice, II.

  
Notary Public  
Serial # (if any): 7560729  
My Commission expires: 5-31-2021



**Exhibit A**  
**Siemens Schedule**

**SIEMENS**

REPAYMENT SCHEDULE I  
to PROMISSORY NOTE DATED April 17, 2015

Original principal amount: \$7,563,601.89

Interest Rate: as defined in section 1 of the Promissory Note dated April 17, 2015

Payment Date	Principal Repayment	Ending Balance	Payment Date	Principal Repayment	Ending Balance
4/17/2015		\$7,563,601.89	5/17/2017	\$157,575.04	\$3,624,225.89
5/17/2015	\$157,575.04	\$7,406,026.85	6/17/2017	\$0.00	\$3,624,225.89
6/17/2015	\$157,575.04	\$7,248,451.81	7/17/2017	\$0.00	\$3,624,225.89
7/17/2015	\$157,575.04	\$7,090,876.77	8/17/2017	\$0.00	\$3,624,225.89
8/17/2015	\$157,575.04	\$6,933,301.73	9/17/2017	\$0.00	\$3,624,225.89
9/17/2015	\$157,575.04	\$6,775,726.69	10/17/2017	\$157,575.04	\$3,466,650.85
10/17/2015	\$157,575.04	\$6,618,151.65	11/17/2017	\$157,575.04	\$3,309,075.81
11/17/2015	\$157,575.04	\$6,460,576.61	12/17/2017	\$157,575.04	\$3,151,500.77
12/17/2015	\$157,575.04	\$6,303,001.57	1/17/2018	\$157,575.04	\$2,993,925.73
1/17/2016	\$157,575.04	\$6,145,426.53	2/17/2018	\$157,575.04	\$2,836,350.69
2/17/2016	\$157,575.04	\$5,987,851.49	3/17/2018	\$157,575.04	\$2,678,775.65
3/17/2016	\$157,575.04	\$5,830,276.45	4/17/2018	\$157,575.04	\$2,521,200.61
4/17/2016	\$157,575.04	\$5,672,701.41	5/17/2018	\$157,575.04	\$2,363,625.57
5/17/2016	\$157,575.04	\$5,515,126.37	6/17/2018	\$157,575.04	\$2,206,050.53
6/17/2016	\$157,575.04	\$5,357,551.33	7/17/2018	\$157,575.04	\$2,048,475.49
7/17/2016	\$157,575.04	\$5,199,976.29	8/17/2018	\$157,575.04	\$1,890,900.45
8/17/2016	\$157,575.04	\$5,042,401.25	9/17/2018	\$157,575.04	\$1,733,325.41
9/17/2016	\$157,575.04	\$4,884,826.21	10/17/2018	\$157,575.04	\$1,575,750.37
10/17/2016	\$157,575.04	\$4,727,251.17	11/17/2018	\$157,575.04	\$1,418,175.33
11/17/2016	\$157,575.04	\$4,569,676.13	12/17/2018	\$157,575.04	\$1,260,600.29
12/17/2016	\$157,575.04	\$4,412,101.09	1/17/2019	\$157,575.04	\$1,103,025.25
1/17/2017	\$157,575.04	\$4,254,526.05	2/17/2019	\$157,575.04	\$945,450.21
2/17/2017	\$157,575.04	\$4,096,951.01	3/17/2019	\$157,575.04	\$787,875.17
3/17/2017	\$157,575.04	\$3,939,375.97	4/17/2019	\$787,875.17	\$0.00
4/17/2017	\$157,575.04	\$3,781,800.93			

Initial: \_\_\_\_\_  
Borrower's Initials

**Exhibit D**



## Phillips Lytle LLP

Via FedEx & U.S. Mail

December 26, 2017

Southern Coal Corporation  
302 S. Jefferson St.  
Roanoke, VA 24011

Attn: James C. Justice III, President and CEO

Re: Siemens Financial Services, Inc. ("SFS")  
Loan to Southern Coal Corporation ("Southern Coal")

Dear Mr. Justice:

We represent SFS. Events of default have occurred and are continuing under the following loan facility and all documents executed in connection therewith (collectively, "Loan Documents")<sup>1</sup> including, but not limited to, payment defaults (collectively, the "Defaults").

Loan Type	Amount Owed as of December 16, 2017	
Promissory Note, dated April 17, 2015, as amended	Principal:	\$3,624,225.89
	Interest:	\$ 132,685.30

The total due to SFS from Southern Coal pursuant to the Loan Documents as of December 16, 2017 is \$3,756,911.19, plus continuing interest, fees, late charges, costs and expenses, including, without limitation, attorneys' fees and expenses (collectively, the "Indebtedness").

Due to the Defaults, SFS hereby declares the Indebtedness to be immediately due and payable in full. Payment is expected by January 2, 2018.

In addition, SFS demands that Southern Coal immediately return all of the Collateral covered by the Loan Documents. In accordance with the Loan Documents, Southern

<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the same meaning herein as used in the Loan Documents.

ATTORNEYS AT LAW

PRESTON L. ZARLOCK, PARTNER DIRECT 716 847 8486 PZARLOCK@PHILLIPSLYTTLE.COM

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 8100

NEW YORK: ALBANY, BUFFALO, CHAUTAUGUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTTLE.COM



Southern Coal Corporation  
Page 2

December 26, 2017

Coal must assemble the Collateral and make it available to SFS at Southern Coal's own risk and expense.

By copy of this letter sent to James C. Justice II, as Guarantor pursuant to the absolute and unconditional Guarantee given in favor of SFS ("Guaranty"), we hereby notify the Guarantor of the Defaults and SFS' acceleration and demand for the repayment of the Indebtedness. Demand is hereby made upon the Guarantor for immediate payment in full of the Indebtedness.

Nothing contained in this letter or any communications between SFS and Southern Coal and/or the Guarantor shall constitute a waiver of any rights or remedies of SFS as against Southern Coal and/or the Guarantor. The demands made herein are without prejudice to any other and further demand that SFS may hereafter make, and SFS hereby reserves and preserves all of its rights and remedies against Southern Coal and the Guarantor pursuant to the Loan Documents and applicable law.

Very truly yours,

Phillips Lytle LLP

By 

Preston L. Zarlock

PLZ/ear2

Doc #01-3089579.1

cc: James C. Justice II, as Guarantor (via FedEx)